

The 2nd July, 1986

No. 9/8/86-6 Lab./4919.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of Presiding Officer, Labour Court, Faridabad, in respect of the dispute between the workman and the management of M/s. Rajwans Engineers, Plot No. 98, Sector 6, Faridabad.

IN THE COURT OF SHRI R. N. SINGAL, PRESIDING OFFICER, LABOUR COURT,  
FARIDABAD

Reference No. 397/1985

*between*

SHRI SURENDER SINGH, WORKMAN AND THE RESPONDENT-MANAGEMENT OF  
M/S RAJWANS ENGINEERS, PLOT NO. 98, SECTOR 6, FARIDABAD.

*Present :—*

Shri S. C. Srivastava, for the workman.

Shri M. P. Gupta, for the respondent-management.

#### AWARD

This industrial dispute between the workman Shri Surender Singh, C/o Kamgar Union Regd., 2/7, Gopi Colony, old Faridabad and the respondent-management of M/s. Rajwans Engineers, Plot No. 98, Sector 6, Faridabad has been referred to this Court by the Hon'ble Governor of Haryana,—*vide* his order No. ID/FD/89-85/30790—95, dated 23rd July, 1985, under Section 10(i)(c) of the Industrial Disputes Act, 1947 for adjudication. The terms of the reference are :—

Whether the termination of services of Shri Surender Singh was justified and in order ? If not, to what relief is he entitled ?

According to the demand notice, the claimant was appointed on 17th December, 1976 as Machine Operator. On 9th July, 1984, when he came out of factory after duty he was suspended mentioning that the charge-sheet will be given on 14th July, 1984. But the workman received the charge-sheet on 9th August, 1984. It was replied on 10th August, 1984 and enquiry officer was appointed. The enquiry was fixed for 22nd September, 1984. He demanded some facilities. These facilities were given to him after 3/4 adjournments. These were also not given completely. On 20th December, 1984 he was turned out from the enquiry. On 3rd November, 1984 he wrote a letter to change the venue of enquiry. He was also not allowed to participate in the enquiry proceedings on 5th January, 1985. On 6th February, 1985 he went to know the next date of hearing. But he did not receive any next date. He received the show-cause notice on 11th March, 1985. It was received by him on 14th March, 1985. It was replied on 15th March, 1985. But he was dismissed on 16th March, 1985. The workman has prayed for reinstatement with continuity of service and with full back wages.

In the written statement, the management has denied the averments of the workman. Preliminary objection is taken that the reference is bad in law. No dispute was first raised with the management. Objection is taken that no claim statement, has been filed. It is alleged that the workman was dismissed from service on 16th March, 1985 after holding a due enquiry. Proper opportunity was given to the workman. In case the enquiry is held to be improper, then the management has prayed to lead evidence in this court.

On merits it is alleged that the workman was offered charge-sheet. The workman refused to receive it. Hence it was sent through registered post. Another charge-sheet was issued to him on 23rd July, 1984. The workman submitted his replies of both the charge-sheets. The replies were considered and found unsatisfactory. Hence the management appointed Shri S. K. Yadav as an enquiry officer. Copy of the enquiry report was sent to him. The workman was issued show cause notice. The workman did not submit his reply. Hence he was dismissed from service,—*vide* letter dated 16th March, 1985. It is further alleged that on first date of enquiry on 15th September, 1984, the workman did not appear. Hence it was adjourned to 22nd August, 1984, on which date the workman appeared. He demanded certain facilities. The enquiry was adjourned to 29th September, 1984. The workman requested to be represented by Shri Chote Lal. This application was allowed. All other facilities admissible under law were also allowed. The

enquiry was adjourned to 6th October, 1984 on which date the management submitted the list of witnesses. The workman was given full opportunity to cross-examine the witnesses of the management. The workman was also directed to produce his defence. The workman produced one witness and he left the proceedings on 20th December, 1984. The workman did not participate in the enquiry, despite letters, dated 22nd December, 1984 and 1st February, 1985. Hence there was no alternative but to proceed *ex parte* against the workman. In this way, it is alleged that the enquiry is legal and justified. It is alleged that the reply of the show cause notice was not received within time.

Rejoinder was filed, denied the averments, raised by the management. The reference was contested on the following issues :—

1. Whether the enquiry is fair and proper?
2. As per preference.

I have heard the representatives of both the parties and have gone through the entire evidence produced in this Court and have also gone through the evidence of the enquiry file. My findings on the above issues are as under :—

*Issue No. 1.—*

The first contention of the representative of the workman is that the charges are vague. The chargesheet dated 14th July, 1984 is Ex. M-11 and the chargesheet dated 23rd July, 1984 is Ex. M-18. According to the chargesheet Ex M-11 from 18th June, 1984 to 9th July, 1984, the workman gave very less production. Whereas in the prior months the production was satisfactory. The workman has reduced his production intentionally. The machine on which he was working was perfectly all right and all the facilities were available. On the same machine full production was given in the II<sup>nd</sup> Shift. The chart of production of the workers has been appended with the charge-sheet. The workman was given oral warnings inspite of that, the workman gave less production intentionally. The second charge is that the workman adopted the less production to harm the management. On 7th April, 1984, he incited the other workers to give less production, so that the management should increase the wages. The supervisor prevented him not to instigate the workmen but the workman misbehaved with him. It is contended that in this chargesheet the name of the workers and name of the supervisor was not given. Hence the chargesheets were vague. He has relied upon the judgment of Hon'ble Supreme Court between Northern Railway Co-operative Credit Society Ltd., and Industrial Tribunal, Jaipur, 1967-11-LLJ Page 46. In the present case, the charges are not vague. The details of production of the claimant and of the second shift have been appended with the chargesheet. The chargesheet does not become vague that the name of the supervisor was not given. The name of the workmen who were instated were not given. Hence the chargesheet is vague to this extent only. But the workman has not alleged in his replies that the charges were vague, whereas in the judgment cited it was alleged by the workman that the charges were vague. If the workman alleged that the charges were vague, the management should have the opportunity to give clarification. So I am of the view that the main part of Ex. M11 is not vague. The detail of day to day production has been given. Supervisor of the machine of the worker was known to the worker. Hence the charge is not vague. The second chargesheet is Ex. M 18. According to the allegations, the workman refused to receive the chargesheet dated 14th July, 1984 on the pretext that he will consult the other workers. It was, therefore, sent to him through registered post on 22nd July, 1984. The service of this chargesheet was refused by the workman through Shri Meen Bahadur Chowkidar in presence of Shri Aggarwal, manager at 11.00 a.m. This chargesheet is also very detailed and is not vague in any respect. The workman replied these chargesheets. His reply is Ex. M-22 and M. 26 were considered. The workman did not show any thing that he did not give less production and he did not give any reason of less production in reply Ex. M. 22. The management had relied upon the production report Ex. M. 6. This production report had not been denied by the workman. In his statement, as WW-1. He has admitted the agreement Ex. M. 7. He has also admitted that he has signed authority letter Ex. M-8. It is, therefore, clear that according to Ex. M. 7 the daily production report was 40 pieces. He was to be paid 28 paise on excess production. The production report Exhibit M. 6 shows that his production was much less than the minimum production fixed in agreement Ex. M. 7. Whereas the production on the second shift on the same machine on the same days was much higher. On 19th June, 1984 the workman had not given any production. No reason was given. Similarly he did not give any production on 21st June, 1984. He gave nominal production of 11 pieces on 11th June, 1984, 14 pieces on 12th June, 1984, 7 pieces on 18th June, 1984, 5 pieces on 20th June, 1984. He gave only 4 pieces on 25th June, 1984, 13 pieces on 26th June, 1984, 26 pieces on 27th June, 1984, 11 pieces on 28th June, 1984. Similarly he gave production of 5 pieces on 7th July, 1984 and 10 pieces each on 5th July, 1984 and 6th July, 1984. The workman's defence witness in the enquiry proceedings had admitted that the workman gave less production. But he has stated that he had asked management not to issue the chargesheet and he will ask the workman to give full production. It is, therefore, clear that the workman had knowingly and intentionally given less production, but the workman had given no explanation why he had given less production. Moreover, he did not participate in the enquiry proceedings dated 5th January, 1985, 25th January, 1985, 9th February, 1985 in spite of the admitted fact that he had received intimation of these dates. I, therefore, find that the enquiry proceedings were conducted fairly and properly.

The workman was given full opportunity to cross-examine the witnesses. He was duly represented by a person of his choice. He had also given one defence witness namely, Shri Ram Surat, who has also admitted that the production was less in those days perhaps some filter was not there. The workman had never given explanation to the chargesheet for less production. Correctness of production report is not challenged. The charge of less production are therefore clearly proved, as the workman has given less production. Hence there is reason to believe that he instigated other workmen to give less production so that the management might increase the wages. The second chargesheet Ex. M-18 is clearly proved from the evidence in the enquiry. Hence I find that the enquiry was fair and proper and the enquiry was based on the evidence produced in the enquiry. This issue is therefore, decided in favour of the management.

*Issue No. 2.—*

It is contended by the workman that the punishment of dismissal is extreme punishment. It is not proportionate to the misconduct of the workman. The mis-conduct to give less production is grave misconduct as mentioned in clause 34 of standing orders of the company. Similarly to instigate other workmen is also a misconduct. Under clause 22 refusal to accept the chargesheet, or order of the management is also a misconduct. Show cause notice was also issued to the workman. Its reply was not received. Hence he was rightly dismissed on 16th March, 1985. Continuous slow down production and to instigate other workers to give less production are serious and major misconduct. If these misconduct are allowed then the industrial peace and production will suffer and the factory will not be able to work. I, therefore, find that the order of dismissal of the workman was legal and justified. He is not entitled to any relief.

R. N. SINGAL,

Dated, the 17th May, 1986.

Presiding Officer,  
Labour Court, Faridabad,

Endst. No. 1318, dated the 24th May, 1986.

Forwarded (four copies), to the Commissioner and Secretary to Government, Haryana, Labour and Employment Department, Chandigarh, as required under section 15 of the I. D. Act.

R. N. SINGAL,

Presiding Officer,  
Labour Court, Faridabad.

No. 9/9/86-6Lab/5215.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of Presiding Officer, Industrial Tribunal, Faridabad, in respect of the dispute between the workman and the management of M/s Sri Girnar Woollen Mill, M-9, Industrial Area, Panipat.

BEFORE SHRI R. N. BATRA, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL, HARYANA,  
FARIDABAD

Reference No. 181/1982

*between*

SHRI RAM BILAS, WORKMAN C/O ENGINEERING AND TEXTILE WORKERS UNION,  
PANIPAT AND THE MANAGEMENT OF M/S SRI GIRNAR  
WOOLLEN MILLS, M-9, INDUSTRIAL AREA, PANIPAT

*Present:—*

Shri Raghubir Singh, for the workman.

Shri Surinder Kaushal, for the Management.

**AWARD**

In exercise of the powers conferred by clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947, the Governor of Haryana referred the following dispute between Shri Ram Bilas, workman and the Management of M/s Sri Girnar Woollen Mills M-9, Industrial Area, Panipat, to this Tribunal for adjudication:—

Whether the termination of services of Shri Ram Bilas, was justified and in order ?  
If not, to what relief is he entitled ?

2. Notices were issued to both the parties. In the claim statement dated 13th July, 1982, it was alleged that the claimant was retrenched in the month of October, 1981, with some other workers and that some other workers were called again for duty in the month of January, 1982, but the claimant was not called. It was alleged that the retrenchment was under *mala fide* intention to keep the claimant outside the factory and as such the claimant be reinstated with full back wages.

3. The Management, in its written statement dated 16th September, 1982 as well as amended written statement dated 27th February, 1985 pleaded that the claimant was recalled when the factory resumed working in January, 1982, by means of letter, but the claimant did not join duty. It was further pleaded that all the workers except the claimant joined duty on 11th July, 1982 and that there was no ill will. It was also pleaded that the claimant was gainfully employed. It was further pleaded that the matter in the claim statement related to recalling the claimant which was not referred to the Industrial Tribunal and as such the reference was bad.

4. The claimant in his rejoinders dated 20th October, 1982 and dated 25th April, 1985 reiterated pleas which were taken in the claim statement.

5. On the pleadings of the parties, the following issues were framed on 20th October, 1982 and 25th April, 1985 :—

- (1) Whether the termination of services of the claimant was justified and in order? If not, to what relief is he entitled? OPM
- (2) Whether the reference is bad as pleaded? OPM
- (3) Whether the workman did not join duty in spite of the letter having been addressed to him as pleaded? OPM
- (4) Whether the claimant was gainfully employed? OPM

6. It may be mentioned that the Management has examined two witnesses and the documents Ex. M-1 to M-5 have been tendered into evidence. The claimant has examined two witnesses and document Ex. W-1 has been tendered into evidence. After going through the entire evidence and hearing the representatives of both the parties, my findings on the above issues are as under :—

#### Issue No. 1 :

7. The Management has examined MW-1 Shri Virender Kumar, who stated that at the time of retrenchment seniority list was displayed copy Ex. M-1 and that notice pay and compensation were given to the claimant,—vide documents Ex. M-2 and M-3.

8. WW-2 Shri Ram Bilas stated in cross-examination that there was no dispute regarding his retrenchment and that he had received his dues at the time of retrenchment. Consequently, the termination of service of the claimant was justified and in order, due to retrenchment, which took place in October, 1981. The issue is decided accordingly in favour of the Management.

#### Issue No. 2 :

9. It was argued by the representative of the Management that the matter regarding recall was in issue in the reference while no reference was made by the Government in this respect and as such the reference was incompetent. The argument does not carry any weight because the matter of recalling is incidental to the point of termination referred to the Government because according to provisions of Section 25-H of the Industrial Disputes Act, 1947, the retrenched employees has to be given opportunity of re-employment, especially when the factory was re-started in January, 1982. The reference is thus not bad. The issue is decided accordingly against the Management.

#### Issue No. 3 :

10. MW-1 Shri Virender Kumar stated that recall notice copy Ex. M-4 was sent to the claimant as well to join duty and that Ex. M-5, was under postal certificate receipt in that respect and since the letter was not received back, the presumption is that the claimant was duly served. The Management has examined MW-2 Shri Rajinder another workman, who stated that he had received recall notice Ex. M-4 and has resumed duty. On the other hand, WW-2 Shri Ram Bilas workman stated that no recall notice was received by him. He further stated that he went to the factory to join duty, but was put off on one pretext or the other and on 14th January, 1982, the Management finally refused to give any job to him, when he filed the complaint in the office of the Labour Inspector on 15th January, 1982 copy Ex. W-1. WW-1 Shri Rajnish Gaur, Clerk of Labour Inspector, stated that the said complaint was not traceable in the record. The evidence therefore, shows that the claimant denied having received the recall notice and stated that he himself came to join duty, but he

was not given job due to which he had to file a complaint to the Labour Inspector, Panipat on 15th January, 1982. Moreover, according to Rule 78 of the Industrial Disputes (Central) Rules, 1957, the recall notice is to be sent by registered post at least 10 days before the date on which vacancies are to be filled. In the present case, the alleged recall notice Ex. M-4 was sent under postal certificate. The same should have been sent by registered post. Merely because some workers received the said notice is no ground to hold that the claimant also received the said notice. The Management should have sent a registered notice to the claimant which he failed to do so. Under all the circumstances, the Management, has failed to prove that the claimant did not want to join duty or he received the letter addressed to him. The issue is decided accordingly against the Management.

Issue No. 4 :

11. No evidence has been led by the Management on this issue. Merely because the claimant is doing the job of labourer is no ground to hold that he was gainfully employed because he was working as Spinner in the respondents factory and no such job was performed by him after the termination of his service. Consequently, the Management has failed to prove that the claimant is gainfully employed. The issue is decided accordingly, against the Management.

12. In view of the above discussion, it is held that the termination of services of the claimant was justified and in order but the claimant is entitled to re-employment under Section 25-H of the Industrial Disputes Act, 1947, because the factory has been re-started and as such the claimant should be given the job of Spinner as and when he reports himself for duty. The award is passed accordingly.

R. N. BATRA,

Dated the 6th June, 1986.

Presiding Officer,  
Industrial Tribunal, Haryana,  
Faridabad.

Endst. No. 391, dated the 6th June, 1986.

Forwarded (four copies) to the Commissioner and Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh as required under Section 15 of the Industrial Disputes Act, 1947.

R. N. BATRA,

Presiding Officer,  
Industrial Tribunal, Haryana,  
Faridabad.

The 15th July, 1986

No. 9/86-61ab/4910.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of Presiding Officer, Labour Court, Ambala, in respect of the dispute between the workman and the management of M/s (i) State Transport Controller, Haryana, Chandigarh (ii) G. M., Haryana Roadways, Jind.

IN THE COURT OF SHRI V. P. CHAUDHARY, PRESIDING OFFICER,  
LABOUR COURT, AMBALA

Reference No. 144 of 1984

(Old No. 241 of 1983)

SHRI TEK RAM, WORKMAN AND THE MANAGEMENT OF THE MESSRS STATE  
TRANSPORT CONTROLLER, HARYANA, CHANDIGARH (II) G. M. HARYANA  
ROADWAYS, JIND.

Present :

Shri Tejinder Singh for the workman.

Shri A. R. Goyal, for respondent.

## AWARD

The Hon'ble Governor of Haryana in the exercise of powers conferred,—*vide* clause (c) of sub-section (i) of section 10 of the Industrial Disputes Act, 1947, referred dispute between Shri Tek Ram workman and G. M. Haryana Roadways, Jind, originally to Labour Court, Rohtak. The terms of the reference are as under :—

Whether termination of services of Shri Tek Ram workman, is justified and correct? If not, to what relief is he entitled?

Labour Court at Ambala was created in April, 1984 thereafter this reference was received by transfer.

Shri Tek Ram through his statement of claim alleged that he joined services of the respondent-management as a Conductor and served the respondent-management for 5½ years. There after his services were terminated without any notice fair and proper Inquiry on 19th October, 1981 in violation of section 25 (F) of Industrial Disputes Act, 1947. He has prayed for his reinstatement with continuity in service and with full back wages.

Respondent-management contested the dispute and contended that the workman served the management as a Conductor. On 23rd November, 1980 he was carrying bus No. 1502 which was checked by Shri C. P. Trikha Welfare Inspector and Satpal Inspector at Talu and was found that the workman had charged full fair amounting to Rs. 8.20 from two passengers who were travelling from Mundhal to Talu and eight passengers from Mundhal village to Dhanana and no tickets were issued to them by the workman. In this way he had embezzled Government money in the tune of money 8.20. Inquiry Officer was appointed who conducted fair and proper enquiry on the basis of the same. It was found that the Conductor has embezzled Rs 8.20 the Government funds and his services were rightly terminated.

Workman filed replication through which he denied the allegations of the respondent-management.

On the pleadings of the parties the followings issues were framed :

Issues :—

1. Whether termination order dated 19th October, 1981, is justified, if not its effect? OPM.
2. Whether enquiry is fair and proper, if not its effect ? OPM.
3. Whether claim statement has not been properly signed and verified, if so, its effect.

Issue No. 2 was treated as a preliminary issue, so it was tried accordingly.

I have heard Shri Tejinder Singh Ld. A. R. of the workman and Shri A. R. Goyal for respondent-management and have perused the oral and documentary evidence placed on the file. My issue wise findings are as under.

Issue No. 1.

In support of this issue management examined Shri Bhup Singh, Inquiry Officer who stated that in April, 1981 he was posted as a Traffic Manager, at Jind,—*vide* order Ex. M-1, he was appointed as Inquiry Officer to go into the allegations received by him and he furnished reply of the same. He also stated that he did not complain against the proceedings of enquiry to any Senior Officer. He went in appeal to S. T.C. and that was rejected.

In view of above evidence of both the parties I am of the considered opinion that the Inquiry Officer Bhup Singh was appointed to go into the allegations against the workman. Inquiry Officer issued notice to the parties. Show cause notices, list of witnesses, charge-sheet etc. were given to the workman. Statements of witnesses were recorded in the presence of workman and the workman was afforded full opportunity to cross-examine the witnesses at length. An opportunity to lead defence evidence was also afforded to the workman. The Inquiry Officer found that the allegations against the workman are correct. He prepared his enquiry report which he submitted to G. M. and copy of the same was also supplied to workman Tek Ram.

On receipt of enquiry report G. M. issued second show cause notice which was replied by Shri Tek Ram. G. M. called the workman in his office afforded him personal hearing as well as heard him in person and thereafter his services were dispensed with.

The Ld. A. R. of the workman did not point out any basic or inherent defect in the enquiry proceedings. So it has to be held that the enquiry is fair and proper as well as it is valid one. So this issue is decided, in favour of management against the workman.

*Issue No. 2.—*

Since the finding of issue No. 2 has been recorded by against the present workman. He issued notices Ex-M-2 conducted enquiry proceeding which is Ex. M-3/124, thereafter afforded full opportunity to workman to cross-examine the witnesses. An opportunity to lead defence evidence was also given to workman but he did not avail of that opportunity. After hearing the workman he recorded his findings Ex. M-4 and thereafter he submitted his enquiry report to G. M. Haryana Roadways, Jind. In cross-examination he stated that Traffic Inspector represented the respondent-management at the time of the enquiry. Detail of witnesses was given in Ex. M-2.

\* Shri Satyabir Singh Dealing Clerk appeared as MW-2 he stated that he has brought the summoned record charge-sheet Ex. M-5. Workman did not file reply of the charge-sheet. Second show cause notice Ex. M-7 was issued thereafter a reminder was also issued but the workman did not furnish any reply to it. Respondant-management afforded personal hearing to the workman. Noting in this regard are Ex. M-9, termination order is Ex. M-10.

Workman to rebut evidence and the management appeared himself as AW-1 he stated that he did not receive any intimation regarding appointment of Inquiry Officer. Copy of report of Inspector was not given to him. Nor copies of statement of witnesses were given to him. He also stated at time of detection no statement of any passenger was recorded, nor his cash was checked. In cross-examination he stated that the statement of Inspector was not recorded in his presence but in the same seigh he stated that he cross-examined the Inspector. He further deposed that he made statement before the Inquiry Officer. When his statement was shown to him he stated that it is the same statement which he made to Inquiry Officer and i. e. Ex. M-3/4. He admitted that after enquiry show cause notice was issued by the undersigned. On the basis of evidence, in favour of, management. So it has to be hold that on the basis of fair and proper enquiry the termination orders were correctly passed because the workman embezzled public funds so workman being a man of doubtful integrity was removed from services, so this issue is again decided in favour of management against the workman.

*Issue No. 3*

The claim statement has been signed by Shri Tejinder Singh on behalf of the workman. It has not been signed or thumb marked by workman nor it has been verified by the workman himself, so I think that the statement of claim has not been properly signed and varified by the workman. So this issue is also decided in favour of management, against the workman.

*Issue No. 4*

For the foregoing reasons on the basis of my issue wise findings I hold that enquiry is fair and proper on the basis of the same the termination order is also justified and correct. So I pass award regarding the dispute accordingly.

Dated the 30th April, 1986.

V. P. CHAUDHARY,

Presiding Officer,  
Labour Court, Ambala.

Endst. No. 1293, dated the 3rd May, 1986

Forwarded (four copies), to the Financial Commissioner and Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh, as required under section 15 of the Industrial Disputes Act, 1947.

V. P. CHAUDHARY,

Presiding Officer,  
Labour Court, Ambala.